

Calendar No. 363

108TH CONGRESS
1ST SESSION

S. 1805

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2003

Mr. CRAIG introduced the following bill; which was read the first time

NOVEMBER 3, 2003

Read the second time and placed on the calendar

A BILL

To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protection of Lawful
5 Commerce in Arms Act”.

1 **SEC. 2. FINDINGS; PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Citizens have a right, protected by the Sec-
4 ond Amendment to the United States Constitution,
5 to keep and bear arms.

6 (2) Lawsuits have been commenced against
7 manufacturers, distributors, dealers, and importers
8 of firearms that operate as designed and intended,
9 which seek money damages and other relief for the
10 harm caused by the misuse of firearms by third par-
11 ties, including criminals.

12 (3) The manufacture, importation, possession,
13 sale, and use of firearms and ammunition in the
14 United States are heavily regulated by Federal,
15 State, and local laws. Such Federal laws include the
16 Gun Control Act of 1968, the National Firearms
17 Act, and the Arms Export Control Act.

18 (4) Businesses in the United States that are en-
19 gaged in interstate and foreign commerce through
20 the lawful design, manufacture, marketing, distribu-
21 tion, importation, or sale to the public of firearms or
22 ammunition that has been shipped or transported in
23 interstate or foreign commerce are not, and should
24 not, be liable for the harm caused by those who
25 criminally or unlawfully misuse firearm products or

1 ammunition products that function as designed and
2 intended.

3 (5) The possibility of imposing liability on an
4 entire industry for harm that is solely caused by oth-
5 ers is an abuse of the legal system, erodes public
6 confidence in our Nation's laws, threatens the dimi-
7 nution of a basic constitutional right and civil lib-
8 erty, invites the disassembly and destabilization of
9 other industries and economic sectors lawfully com-
10 peting in the free enterprise system of the United
11 States, and constitutes an unreasonable burden on
12 interstate and foreign commerce of the United
13 States.

14 (6) The liability actions commenced or con-
15 templated by the Federal Government, States, mu-
16 nicipalities, and private interest groups are based on
17 theories without foundation in hundreds of years of
18 the common law and jurisprudence of the United
19 States and do not represent a bona fide expansion
20 of the common law. The possible sustaining of these
21 actions by a maverick judicial officer or petit jury
22 would expand civil liability in a manner never con-
23 templated by the framers of the Constitution, by
24 Congress, or by the legislatures of the several
25 States. Such an expansion of liability would con-

1 stitute a deprivation of the rights, privileges, and
2 immunities guaranteed to a citizen of the United
3 States under the Fourteenth Amendment to the
4 United States Constitution.

5 (b) PURPOSES.—The purposes of this Act are as fol-
6 lows:

7 (1) To prohibit causes of action against manu-
8 facturers, distributors, dealers, and importers of
9 firearms or ammunition products for the harm
10 caused by the criminal or unlawful misuse of firearm
11 products or ammunition products by others when
12 the product functioned as designed and intended.

13 (2) To preserve a citizen’s access to a supply of
14 firearms and ammunition for all lawful purposes, in-
15 cluding hunting, self-defense, collecting, and com-
16 petitive or recreational shooting.

17 (3) To guarantee a citizen’s rights, privileges,
18 and immunities, as applied to the States, under the
19 Fourteenth Amendment to the United States Con-
20 stitution, pursuant to section 5 of that Amendment.

21 (4) To prevent the use of such lawsuits to im-
22 pose unreasonable burdens on interstate and foreign
23 commerce.

24 (5) To protect the right, under the First
25 Amendment to the Constitution, of manufacturers,

1 distributors, dealers, and importers of firearms or
2 ammunition products, and trade associations, to
3 speak freely, to assemble peaceably, and to petition
4 the Government for a redress of their grievances.

5 **SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL**
6 **LIABILITY ACTIONS IN FEDERAL OR STATE**
7 **COURT.**

8 (a) IN GENERAL.—A qualified civil liability action
9 may not be brought in any Federal or State court.

10 (b) DISMISSAL OF PENDING ACTIONS.—A qualified
11 civil liability action that is pending on the date of enact-
12 ment of this Act shall be immediately dismissed by the
13 court in which the action was brought.

14 **SEC. 4. DEFINITIONS.**

15 In this Act, the following definitions shall apply:

16 (1) ENGAGED IN THE BUSINESS.—The term
17 “engaged in the business” has the meaning given
18 that term in section 921(a)(21) of title 18, United
19 States Code, and, as applied to a seller of ammuni-
20 tion, means a person who devotes, time, attention,
21 and labor to the sale of ammunition as a regular
22 course of trade or business with the principal objec-
23 tive of livelihood and profit through the sale or dis-
24 tribution of ammunition.

1 (2) MANUFACTURER.—The term “manufac-
 2 turer” means, with respect to a qualified product, a
 3 person who is engaged in the business of manufac-
 4 turing the product in interstate or foreign commerce
 5 and who is licensed to engage in business as such a
 6 manufacturer under chapter 44 of title 18, United
 7 States Code.

8 (3) PERSON.—The term “person” means any
 9 individual, corporation, company, association, firm,
 10 partnership, society, joint stock company, or any
 11 other entity, including any governmental entity.

12 (4) QUALIFIED PRODUCT.—The term “qualified
 13 product” means a firearm (as defined in subpara-
 14 graph (A) or (B) of section 921(a)(3) of title 18,
 15 United States Code), including any antique firearm
 16 (as defined in section 921(a)(16) of such title), or
 17 ammunition (as defined in section 921(a)(17)(A) of
 18 such title), or a component part of a firearm or am-
 19 munition, that has been shipped or transported in
 20 interstate or foreign commerce.

21 (5) QUALIFIED CIVIL LIABILITY ACTION.—

22 (A) IN GENERAL.—The term “qualified
 23 civil liability action” means a civil action
 24 brought by any person against a manufacturer
 25 or seller of a qualified product, or a trade asso-

1 ciation, for damages resulting from the criminal
2 or unlawful misuse of a qualified product by the
3 person or a third party, but shall not include—

4 (i) an action brought against a trans-
5 feror convicted under section 924(h) of
6 title 18, United States Code, or a com-
7 parable or identical State felony law, by a
8 party directly harmed by the conduct of
9 which the transferee is so convicted;

10 (ii) an action brought against a seller
11 for negligent entrustment or negligence per
12 se;

13 (iii) an action in which a manufac-
14 turer or seller of a qualified product vio-
15 lated a State or Federal statute applicable
16 to the sale or marketing of the product,
17 and the violation was a proximate cause of
18 the harm for which relief is sought, includ-
19 ing—

20 (I) any case in which the manu-
21 facturer or seller knowingly made any
22 false entry in, or failed to make ap-
23 propriate entry in, any record re-
24 quired to be kept under Federal or
25 State law;

1 (II) any case in which the manu-
2 facturer or seller aided, abetted, or
3 conspired with any person in making
4 any false or fictitious oral or written
5 statement with respect to any fact
6 material to the lawfulness of the sale
7 or other disposition of a qualified
8 product; or

9 (III) any case in which the man-
10 ufacturer or seller aided, abetted, or
11 conspired with any other person to
12 sell or otherwise dispose of a qualified
13 product, knowing, or having reason-
14 able cause to believe, that the actual
15 buyer of the qualified product was
16 prohibited from possessing or receiv-
17 ing a firearm or ammunition under
18 subsection (g) or (n) of section 922 of
19 title 18, United States Code;

20 (iv) an action for breach of contract
21 or warranty in connection with the pur-
22 chase of the product; or

23 (v) an action for physical injuries or
24 property damage resulting directly from a
25 defect in design or manufacture of the

1 product, when used as intended or in a
2 manner that is reasonably foreseeable.

3 (B) NEGLIGENT ENTRUSTMENT.—As used
4 in subparagraph (A)(ii), the term “negligent en-
5 trustment” means the supplying of a qualified
6 product by a seller for use by another person
7 when the seller knows, or should know, the per-
8 son to whom the product is supplied is likely to,
9 and does, use the product in a manner involving
10 unreasonable risk of physical injury to the per-
11 son or others.

12 (C) REASONABLY FORESEEABLE.—As used
13 in subparagraph (A)(v), the term “reasonably
14 foreseeable” does not include any criminal or
15 unlawful misuse of a qualified product, other
16 than possessory offenses.

17 (D) RULE OF CONSTRUCTION.—The excep-
18 tions described in subparagraph (A) shall be
19 construed so as not to be in conflict and no pro-
20 vision of this Act shall be construed to create
21 a Federal private cause of action or remedy.

22 (6) SELLER.—The term “seller” means, with
23 respect to a qualified product—

24 (A) an importer (as defined in section
25 921(a)(9) of title 18, United States Code) who

1 is engaged in the business as such an importer
2 in interstate or foreign commerce and who is li-
3 censed to engage in business as such an im-
4 porter under chapter 44 of title 18, United
5 States Code;

6 (B) a dealer (as defined in section
7 921(a)(11) of title 18, United States Code) who
8 is engaged in the business as such a dealer in
9 interstate or foreign commerce and who is li-
10 censed to engage in business as such a dealer
11 under chapter 44 of title 18, United States
12 Code; or

13 (C) a person engaged in the business of
14 selling ammunition (as defined in section
15 921(a)(17) of title 18, United States Code) in
16 interstate or foreign commerce at the wholesale
17 or retail level, who is in compliance with all ap-
18 plicable Federal, State, and local laws.

19 (7) STATE.—The term “State” includes each of
20 the several States of the United States, the District
21 of Columbia, the Commonwealth of Puerto Rico, the
22 Virgin Islands, Guam, American Samoa, and the
23 Commonwealth of the Northern Mariana Islands,
24 and any other territory or possession of the United

1 States, and any political subdivision of any such
2 place.

3 (8) TRADE ASSOCIATION.—The term “trade as-
4 sociation” means any association or business organi-
5 zation (whether or not incorporated under Federal
6 or State law)—

7 (A) that is not operated for profit;

8 (B) of which 2 or more members are man-
9 ufacturers or sellers of a qualified product; and

10 (C) that is involved in promoting the busi-
11 ness interests of its members, including orga-
12 nizing, advising, or representing its members
13 with respect to their business, legislative or
14 legal activities in relation to the manufacture,
15 importation, or sale of a qualified product.

16 (9) UNLAWFUL MISUSE.—The term “unlawful
17 misuse” means conduct that violates a statute, ordi-
18 nance, or regulation as it relates to the use of a
19 qualified product.

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